IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

FEDERAL TRADE COMMISSION, et al., Plaintiff, vs. SYNGENTA CROP PROTECTION AG, SYNGENTA CORPORATION, SYNGENTA CROP PROTECTION, LLC, and CORTEVA, INC. Defendants.	CASE NO. 1:22CV828
IN RE: CROP PROTECTION PRODUCTS LOYALTY PROGRAM ANTITRUST LITIGATION This transcript relates to: ALL ACTIONS.	CASE NO. 1:23MD3062 Winston-Salem, NC April 18, 2024

TRANSCRIPT OF THE **INITIAL PRETRIAL CONFERENCE**
BEFORE THE HONORABLE JOI E. PEAKE
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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P R O C E E D I N G S

THE COURT: All right. I'm going to ask my law clerk to call the first case on the calendar, just the FTC case at this point.

LAW CLERK: The matter now before the Court is Federal Trade Commission, et al. versus Syngenta Corporation, et al, Case No. 1:22CV828. This matter is on for an initial pretrial conference.

THE COURT: Okay. Very good.

All right. And so in this FTC case, what I'm going to do first is just ask the folks who are appearing and intending to be heard in that case this morning to just stand and identify yourselves for me and for the record.

The case manager probably mentioned to you that we're recording rather than having a court reporter. So it's going to be hard for her to keep track -- or him, whoever ends up transcribing this, if we need it transcribed -- to be able to keep up with who is talking when. So I'm going to ask you to introduce yourselves now, but then please be repetitive on that so that anytime you're standing up to speak again, if you could reintroduce yourself just for the record. I think that would be helpful.

So let me start with the FTC, if you want to introduce who is here for you and who is going to be speaking or handling this.

MS. MALTAS: Good morning, Your Honor. I'm Allyson Maltas from the Federal Trade Commission on behalf of the Government Plaintiffs.

THE COURT: Okay.

MS. MALTAS: And I'm joined by my colleagues, Wesley Carson and Elizabeth Gillen, who may also speak today.

THE COURT: So it's Mr. Carson and Ms. Gillen.

And, Ms. Maltas, you'll be handling most of the matters; is that correct?

MS. MALTAS: Yes, Your Honor. I believe if there are any questions specifically for the State Plaintiffs --

THE COURT: Right.

MS. MALTAS: -- Paul Harper from the State of Illinois will be addressing those.

THE COURT: And that's collectively for the State Plaintiff's; is that correct?

MS. MALTAS: Yes, Your Honor, for more State-specific issues.

THE COURT: Okay. All right.

And then for the Defendants, who have we got?

MR. MARRIOTT: Good morning, Your Honor. David Marriott for Corteva. And with me, of course, is Mark Anderson.

MR. ANDERSON: Good morning, Your Honor.

THE COURT: Good morning.

MR. ANDERSON: Mark Anderson from McGuireWoods.

THE COURT: Very good. Good to see you this morning.

MR. ANDERSON: Good to see you.

THE COURT: Help me with your name again. I don't have the list.

MR. MARRIOTT: David Marriott and Mark Anderson.

THE COURT: Yes.

MR. MARRIOTT: Thank you, Your Honor.

THE COURT: All right. Very good.

All right. Yes, sir.

MR. KANE: Good morning, Your Honor. Patrick Kane, Fox Rothschild, for the Syngenta Defendants. With me is James McClammy and Charles Duggan. Mr. McClammy will be doing the majority, if not all, of the speaking for the Syngenta Defendants today.

THE COURT: So it's Mr. McClammy?

MR. McCLAMMY: McClammy, yes, Your Honor.

THE COURT: All right. And Mr. Duggan; is that right?

MR. KANE: Duggan.

THE COURT: D-U-G-G-I-N [sic].

And I know we have the official record. I am going to just try to make sure I've got my notes of who I am going to be hearing from primarily.

Thank you, Mr. Kane.

MR. KANE: Thank you, Your Honor.

THE COURT: All right. So the matter is here for an initial pretrial conference and entry of a scheduling order. I understand there are differences in the Rule 26(f) reports. I understand also, of course, that some of those overlap with the MDL.

As I indicated in my text order yesterday, I am not intending the call the MDL case for an initial pretrial conference. They need more notice on that, and that's not what we're here for today. But since we're going to be talking about that case, I want to be able to hear from them and also have that on the record as well in that case.

So I'll hear from you if there are any objections, but what I would intend to do is go ahead and ask the clerk to call the MDL case as well so that we're on record in both cases, and then that way I can hear from whoever needs to be heard if there's issues in that case that I need to address as well.

Proceeding that way, Ms. Maltas, is there any objection to that?

MS. MALTAS: No objection, Your Honor.

THE COURT: All right. And any objections from the Defendants on that.

MR. MARRIOTT: None here, Your Honor.

MR. McCLAMMY: No, Your Honor.

THE COURT: Okay. And that's Mr. Marriott and Mr. McClammy; is that correct?

(Indiscernible cross-talk.)

THE COURT: All right. So I am going to ask my clerk, if you would, to call the MDL case as well.

THE CLERK: The matter before the Court is Case 1:23MD3062, Crop Protection Products Loyalty Program Antitrust Litigation.

THE COURT: All right. And as to the MDL case, we have some lead Plaintiff or attorneys who have been designated for that role?

Yes, ma'am?

MS. MACLEAN: We do, Your Honor. My name is Margaret MacLean from Lowey Dannenberg for the private Plaintiffs.

THE COURT: Okay.

MR. PINTO: And Richard Pinto for the private Plaintiffs.

THE COURT: Good to see you, Mr. Pinto.

All right. It's Ms. MacLean; is that right?

MS. MACLEAN: That's right.

THE COURT: Are you going to be handling things for the MDL Plaintiffs this morning?

MS. MACLEAN: Yes, ma'am.

THE COURT: And then for the Defendants, Mr. Marriott, are you appearing in that case as well?

MR. MARRIOTT: I am, Your Honor, as is Mr. Anderson.

THE COURT: And then for Syngenta, Mr. Kane, Mr. McClammy, and Mr. Duggan, are you all appearing in that as well?

MR. KANE: All the same, yes.

THE COURT: Anyone else appearing for Defendants in the MDL?

All right. So what I would intend to do is hear from you generally. Of course, I've read the reports and position papers, and so I have some sense; but I want to make sure everybody has a chance to be heard on all of the issues before we start getting into the weeds about what we're going to do or how we're going to set things up.

Ms. Maltas, I am going to start with you and let you just give a general overview.

And, as is my ordinary practice, I will go through the room until everyone has had a chance to be heard and respond to anything they want to on that.

MS. MALTAS: Thank you so much, Your Honor.

So, obviously, we're here on the Government case, as directed by Your Honor, for the Rule 26 conference so that we can enter the scheduling order in this case and get discovery started.

We do have an agreed schedule with the Defendants, and that's found at Appendix A of the Government Plaintiff's

26(f) report. We respectfully request that the Court go ahead and enter that schedule today, and I understand that we do have Defendants' agreement on that as well.

There's also a few issues of coordination that came up through this process and then the 26(f) reports. Plaintiff's position is that we should table all coordination issues and allow the parties in the Government Plaintiff's case as well as the MDL case and the Defendants to draft a separate coordination order. This type of thing is done really commonly in cases where you have a government case with a follow-on private plaintiff suit. We attached a couple of examples at Exhibits 1 and 2 of our 26(f) order. And that's exactly what we're contemplating in this case.

It would cover, you know, how documents should be produced to everyone and how they can be used and how they can be admitted. It would cover deposition limits, time for depositions, for overlapping depositions in the case, just anything where it would be more efficient for the Court and the witnesses and third parties to have coordination between the two cases.

And we definitely feel very strongly that we should have our scheduling order issued first and then the coordination order to follow so that we can go ahead and get started with discovery in our case. We also understand that Defendants agree with that, though, we will, of course, give

them an opportunity to confirm that.

There are two issues of dispute in terms of the discovery limits that have been raised between our two reports, and those both deal with deposition limits, how many depositions can be taken of each Defendant by the Government Plaintiffs in our case and then also whether or not there should be any sort of preemptive limit or ability by the Defendants to take depositions of the Government Plaintiffs.

We understand from talking to Defendants earlier today that they no longer feel that we are at an impasse on that issue and that they would like to continue to meet and confer. We're, of course, open to doing that. We don't want to bother Your Honor with a dispute that's not really a dispute. However, we feel very comfortable with the request that we've made for 20 depositions per Defendant and to not have any ruling at this time as to whether or not there could be depositions of the Government Plaintiffs. So we may be back here with you at some point to talk about those, but at this point, if they are willing to keep talking, so are we.

THE COURT: Okay. One minor difference I noticed as well, in addition to the numbers, was whether former employees would count or which group former employees would count, whether they counted as third party or whether they counted with the Defendants' number.

I don't know. Was that resolved, or do you have a

position on that?

MS. MALTAS: I think we both agree that the former employees should come out of the Defendants' number and should not be third parties, but I'll definitely ask the Defendants to confirm that as well.

THE COURT: Okay. All right. I will hear from them and then come back if there is anything else.

MS. MALTAS: Thank you, Your Honor.

THE COURT: Very good.

Yes, sir, Mr. Marriott, are you going to start us out?

MR. MARRIOTT: I am, Your Honor.

THE COURT: Okay.

MR. MARRIOTT: David Marriott for Corteva.

So as counsel for FTC, and, I believe, in that respect also the States, Your Honor, says, the parties have spent a lot of time meeting and conferring, and we've actually come to a lot of agreements and I think more or less come to an understanding as to what at least we propose the Court do today.

And so with respect to the schedule, we do agree with Plaintiffs in this case that the schedule that has been proposed and agreed upon informally by the parties should become the schedule entered by the Court. And we're happy to have that be entered today at the Court -- or at the Court's

earliest convenience, whether today or some other day. So we are agreed on a schedule, Your Honor. And you'll find that, just for example, in Exhibit A to the Plaintiffs' 26(f) statement. They've got a black line there that basically does the same thing as ours. So we're fine with that as the schedule.

With respect to depositions, Your Honor, there are, as set out in the papers, some present disagreements. But as counsel says, I do think there is reason here for further meeting and conferring on this. We had made a proposal for a compromise as it related to both of the cases, but we heard loud and clear Your Honor's order of yesterday that they will be done separately.

With that in mind, with that guidance, I think it would be beneficial for us now to spend a little bit more time talking with one another and seeing if we can't come to a resolution that avoids a need for the Court to do anything in that respect. So I would propose, as has been suggested, that we come back to the Court at some future time.

For what it's worth, under the schedule to which the parties have agreed, depositions won't take place for many, many months. And so there's no risk of there being any delay associated with our having a little bit more time to decide that question.

THE COURT: So certainly that makes sense as to this

issue of deposing the Plaintiffs or not deposing the Plaintiffs or working that out.

As to the number of depositions for the Defendants, are you all in agreement on that or where --

MR. MARRIOTT: We're not yet in agreement, Your Honor. I think we have some form of disagreement there. We think we ought to defer that question. We have not yet, for example, exchanged 26(a)(1) disclosures. So we don't know who they have in mind as their witnesses. They don't really know who we have in mind for ours. We are still seeking at some level to coordinate with the private Plaintiffs.

We think there is a relationship there between those cases. The Plaintiffs in the Government action don't necessarily have that view. But we think there is reason to continue to talk about that, Your Honor.

And, again, since depositions are so far off, there doesn't seem, in our view, to be any reason now to upset basically what the default says. There's plenty of time for somebody to come in and say, I need more depositions; it ought to be something different from what it is.

And we understand the Government, and probably also the private Plaintiffs in the MDL, want more depositions than the default would permit, and we're totally open to having a conversation to try to find some common ground as to between the two.

THE COURT: Okay. And just to wrap up that last maybe minor piece, are former employees, in your view, included within the number of the Defendants' depositions?

MR. MARRIOTT: Yes, we agree with the Government, Your Honor. They are counted as Defendant depositions.

THE COURT: Okay. All right.

Then let me go to Mr. McClammy.

Are you handling things for Syngenta?

MR. McCLAMMY: Yes. Good morning, Your Honor. Jim McClammy of Davis Polk & Wardwell for Syngenta.

I think, as was mentioned by the Government and Mr. Marriott, we are all in general agreement with respect to having the schedule entered by this Court as soon as the Court is able and then having continued discussions about the number of depositions so that we can come back to Your Honor.

I do think, as was mentioned, it will be important to understand that one of the factors there will be can we have discussions with the private Plaintiffs in the MDL sooner rather than later to try to really expedite getting to agreement on coordination.

I don't think there is any disagreement at all as to the fact that we are amenable to having discovery start in the MDL, even though the motions to dismiss are pending. I believe that they are amenable to receiving that discovery starting sooner.

So we would then propose that if Your Honor is amenable to the concept of these cases, you know, attempting to coordinate, that we should at least think about having a date set for pretrial conference there and having the Rule 26(f) process begin sooner so that we can come back to the Court in a reasonable amount of time.

THE COURT: Okay. All right. That's helpful.

Before I get into that MDL issue, let me come back to Ms. Maltas on the question of whether I set a number for depositions of Defendants' employees or whether I leave that open.

MS. MALTAS: So, as we said, we're willing to continue to negotiate. We think 20 depositions per Defendant is more than reasonable, given the decades that this conduct has been ongoing, the way that the companies are structured and the number of employees who, for example, handle communications with distributors, or marketing, the number of executives.

So, you know, we have put a lot of thought into the fact that we think that 20 per Defendant, including former employees, is more than reasonable. And, as I said, if we're no longer at an impasse because Defendants are also willing to consider that, then we'll continue to discuss with them.

THE COURT: So I don't want to leave it completely open, although I understand the idea that it will be some time before the depositions actually begin.

Let me come back to Defendants and see if there is anything else to add on anything else.

MR. MARRIOTT: Well, Your Honor, I would say that I think it makes sense to continue to have a conversation. We certainly have a different view, in full candor, from the Government about the appropriate number of depositions.

As, undoubtedly, Your Honor knows better than any of us, the default, of course, is there be 10 depositions basically a side, and what the Government has proposed here is that there be 20 of Corteva and 20 of Syngenta, so for a total of 40. So they want 40 just from the parties, though the rule would say they get 10 for the entire side. And so we think that number is well beyond what has been shown to be justified at this point in the case, right. The default rule is those are -- you get 10 a side. And then a party, if they need more, under appropriate circumstances, they show that they need more.

It's true that some of the conduct that's alleged here goes back in time, Your Honor. But what's also true here is that in a lengthy investigation, the Government took nine -- they are not called depositions -- investigative hearings, but effectively depositions. They took nine of Corteva. They took ten of Syngenta. And we don't know the number they took of third parties, but our best estimate is that it's at least 15 or so, based on something we thought we heard the Government say previously. So they've had the benefit of 30-plus

depositions already, which, at least as we understand the Government's position, they would intend to use in this case.

So in view of that and just generally what the default rules are, our view is that it's just premature to now be deciding that the rules that govern generally should be basically blown up, and we should multiply many fold the number of depositions.

That said, we haven't got their 21(a) -- their 26(a)(1) disclosures. We haven't had a chance to fully collaborate with the private Plaintiffs. And I think there is opportunity to find a potential middle ground. But at the moment at least, we do have a different view of what's appropriate, and I didn't want to not say that to the Court.

THE COURT: All right. I think that's helpful.

Mr. McClammy, anything you needed to add on that?

MR. McCLAMMY: Nothing much to add to that, Your Honor. Again, Jim McClammy for the record.

I think, given the parties' willingness to discuss these matters, if we stayed with the local rules at least for now, without prejudice, obviously, to the parties' ongoing discussions, that would be fine.

We do believe that, you know, we've made a reasonable compromise in light of efforts to try to coordinate between the two actions of extending that to the 10, but I don't think that imposing now a number of 20 would be appropriate based on the

record that is set. But, again, we are willing to have these discussions with the Government.

THE COURT: All right. I was going to come back to Ms. Maltas, but if you wanted to add something first, Mr. Marriott.

MR. MARRIOTT: Thank you. David Marriott.

So I think our notion would be not that we have this drag on forever and not that we would necessarily argue it now, but that we endeavor quickly to coordinate with the Plaintiffs in the MDL. We're ready to do that conference as soon as they and the Court are prepared to have it set.

That will allow us to at least have that inform the discussion, because while we may not all see eye to eye on what coordination ought to look like, I think everybody has agreed there should be some form of coordination. So sorting out the form of coordination, in our minds, has an impact on what the appropriate number of depositions in the case is.

And we're prepared to do that with them as quickly as they and the Court are able. We could do it next week if everybody were ready to do it. And then we could do the meet-and-confer on this deposition issue and also get back to the Court soon.

So when we talk about suggesting there be more time, we're not talking about a long time. We'll do it as quickly as the Court wants us to do it. That's the point I want to make

sure is understood. We're not talking about delaying this a very long time, Your Honor.

THE COURT: Okay. All right.

Ms. Maltas?

MS. MALTAS: So I guess what's just important for us to convey, because I think maybe what I'm hearing from Defendants now is a little bit different from what I heard from them before we walked in here, is we, as the Government Plaintiffs, in our case need 20 depositions each of Syngenta and Corteva. And I know that they would like for us to share our depositions in some way with the MDL Plaintiffs, and that's not something that we are willing to do. We have our case to prosecute. We have our own facts, our own evidence that we need to develop. We're happy to coordinate how those depositions go forward, and we're definitely happy to have a coordination order that provides for more depositions, potentially, so that there can be that coordination.

But if what we're really driving towards here is a coordination order that gives us 15 depositions to be shared between the Government Plaintiffs and the MDL Plaintiffs, we're not going to agree to that at any point. And so it might make more sense for Your Honor just to order that we, as the Government, can have 20 depositions guaranteed of each of Syngenta and Corteva, and then we can figure out the coordination further after that.

I mean, I'll just say that, you know, we understand their position that we have a precomplaint investigation. The case law is very clear that doing a precomplaint investigation does not restrict the Government from having the discovery that it needs in the case, because what we're doing here is very different than what we did in the investigation. And we attached a number of cases to our 26(f) that show that what we're asking for is actually significantly less than the FTC and the States and the DOJ did in other similar cases, and, in fact, significantly less. So I think our request is very reasonable.

We're happy to keep talking if there is a place to go. I'm not hearing maybe that there actually is as much movement as I thought there was going to be. So if there's not, then we would just request the 20 depositions per Defendant for us.

THE COURT: Okay. Do you have sort of an outline of who those 20 would be just so I know?

If I'm just picking a number, I will split the difference and call it 15; but if you've got something that you can outline for me where that 20 comes from, then that would be helpful in knowing, you know, why or where that's coming from.

MS. MALTAS: Of course. If Your Honor doesn't mind, I would like to turn this over to my colleague, Mr. Carson, who is more familiar with the details?

THE COURT: Sure.

MR. CARSON: Yes, Your Honor. Wesley Carson on behalf of Plaintiffs.

So I think the number that we have landed on, 20 depositions, is based on, you know, our knowledge of the Defendants' structure as well as the conduct involved in the case.

So just by way of example, without getting into specific names, in Corteva there are a number of individuals responsible for the overall direction/strategy of a loyalty program. So we believe there's an individual in charge of the overall direction as well as three individuals responsible for loyalty programs for the 3A Corteva AIs at issue. There are individuals responsible for the technical implementation of the loyalty programs, along with a number of support staff that support that. There is --

THE COURT: So you're talking about then doing the person who is in charge of the technical implementation, but also all their support staff as well?

MR. CARSON: Not all the support staff, Your Honor, but there may be a need, depending on discovery, that we obtain -- if there are individuals who are more involved in one aspect than another, that we would perhaps have one or two support staff that would be deposed in that -- in the course of the depositions.

There are also a number of individuals responsible for Corteva's distributor relationships, both at the national level -- so there are a number of large distributors that participate in these loyalty programs. I believe in our papers we said seven or eight of the largest distributors account for approximately 90 percent of the market, or something along those lines. So there are individuals at the national level responsible for those distributor relationships as well as regional individuals who have direct communications with those distributors on issues such as loyalty, compliance, and supply allocation.

THE COURT: Is there one per distributor, or there's one national and some regional that oversee all of those distributors?

MR. CARSON: It kind of varies depending on the region.

THE COURT: Right.

MR. CARSON: At national, we believe that there is one individual responsible for national accounts in general as well as individuals under that individual that are responsible for relationships with specific distributors. And then within the regions, it kind of depends. I believe there are kind of buckets of distributors that are assigned to various individuals in those regions.

There's the Western region and then there is a

Midwest region and the Eastern region. So there are a number of regions around the country.

THE COURT: Okay.

MR. CARSON: There are also executives that are responsible for overall strategy in terms of sales, marketing, et cetera, for all of Corteva's products. And that's just for Corteva, Your Honor.

THE COURT: But you're asking for 20 on each; right? So this would be -- so that's where you get the 20?

So the -- I've got maybe four in the direction, strategy, and loyalty; maybe two in the technical implementation, and then maybe another one or two, depending on discovery; the distributor relationship overseer, one national, three regional, and maybe some additional assigned to specific; and then some number of executives regarding strategy and sales?

MR. CARSON: For the distributor relationships, we believe there are multiple individuals on the national level that are responsible for relationships with the different distributors.

THE COURT: How many of those?

MR. CARSON: We don't know the exact number, Your Honor. Our discovery stopped around two or three years ago. So we're not sure of the exact structure, but we believe there are a number of individuals in those roles.

THE COURT: Okay. And what about number of executives?

MR. CARSON: So we know there's at least one individual responsible for crop protection products in general. We know there's another individual, again at the time of the investigation -- so we don't know the exact current state of it -- that was responsible for kind of overall loyalty strategy in general separate from strategy related to specific AIs. So there are a number of executives within the corporate structure at Corteva that we think would have relevant discoverable information in this case.

THE COURT: Okay. Did you want to talk to me about Syngenta as well?

MR. CARSON: Yeah. So Syngenta has, I think, a similar structure. There are different key account managers for each major distributor, and we do believe that there are eight or nine individuals that were responsible for the largest distributors in the country at the national level. So there -- we do know there's one specific individual for each distributor in Syngenta. That may be the case for Corteva as well. We are not exactly sure of the structure there.

There are also separate employees that are responsible for managing the retail loyalty program that Syngenta has as well as a separate marketing group that includes individuals responsible for life cycle and post-patent

management planning, including loyalty programs. And these marketing personnel, again, are specific AI individuals. So there are three Corteva active -- or Syngenta active ingredients, and there are those three individuals that were responsible for each of the active ingredients or portfolios including those active ingredients. Again, you know, as before with Corteva, there are potential support staff that work under these individuals that may have relevant and unique information.

THE COURT: Okay.

MR. CARSON: Again, with Syngenta, there are also regional individuals, so field staff, that have direct relationships with the distributors, including the head of sales and one field sales rep that we had an IH of, but there are additional individuals that are throughout the country.

Finally, there are individuals with Syngenta that are in the Swiss headquarters that negotiated the contract that's referenced in the complaint between Corteva and Syngenta that we would like to have depositions of as well.

And, Your Honor, one thing to keep in mind in all of these kind of individuals I'm talking about is these are just roles. And the conduct here spans, I would say -- you know, in Corteva's case, the loyalty programs, the earliest ones came in, I think, in 2016 and Syngenta was all the way back to 2004. So there are potentially for each of these roles multiple

individuals that would be responsible for the active ingredients, the distributor relationships at any given time.

We know for Corteva, for instance, at least four of the individuals that have roles that we took investigational hearings of we believe have left the company. So there are new individuals that we don't know who they are, what kind of information they have. So given the kind of, I think, the time period that we're looking at here, there's potential for multiple depositions of a similar role because they would have unique information, given the important time period that they were at the company.

THE COURT: Okay. All right. I am going to let them respond. And then if there is anything else you wanted to add, I will come back to you.

MR. CARSON: Yes, Your Honor.

THE COURT: Yes, sir, Mr. Marriott?

MR. MARRIOTT: Thank you, Your Honor.

Again, respectfully, we would submit that there's not sufficient showing at this time to decide to exceed the default rule.

What counsel said, Your Honor, could be said in virtually every case. In virtually every case where there's a challenge to a policy, there's somebody who is responsible for the policy. There's somebody who is responsible for the implementation. There's an executive involved. In any

decent-sized company, there's going to be a regional person here and a national person there.

I would submit, Your Honor, that generalized of a showing, which is for the first time now being made to us as we sit here, is not enough to justify at this stage of the case more than, what, nine months or so away from taking any depositions that we ought to just decide that they get necessarily in the abstract more depositions.

I want to make sure that we put in context the request, because while they are saying 20 depositions for Corteva and 20 for Syngenta, they are really saying that they want at least 50 depositions, because what they're proposing is 20 from us, 20 from them, and 30 from the third parties, so 50, which is five times the presumptive limit.

And then, of course, if you take into account the other depositions -- and while it's true that they get to take discovery in this case, and we're not trying to suggest that they shouldn't get to take discovery in this case, what we're saying is the amount of discovery they get here ought to be based on all the facts and circumstances, and all the facts and circumstances include that they have taken, by our estimate, 34 depositions of other people that allows them to say some of the things you heard here today. They have taken nine of us, ten of them, and a whole bunch of third-party depositions.

So in your minds, Your Honor, it may be we can't

ultimately reach an agreement, but I don't see any reason not to give it a shot, especially when we can do it in some form of coordination, because I do think the private Plaintiffs in the MDL are going to presumably be interested in some of the same people. And as we figure out numbers, I think it's going to be easier to do that when we have a sense of how it all fits together.

And we totally get that each side has got their separate case. No one has ever questioned that they have their separate case. But what we do think is important is not to lose sight of what the judicial panel on multidistrict litigation said when it sent it here, which is, to quote them -- or paraphrase them, they sent it here so that there could be, in their words, close coordination between the cases.

And just sort of charting off with an absolute 20 irrespective of what's actually needed or showing that it's required and having presumably the same thing happen in the case is, in our minds, not the best way to do it when there is no reason to do it, you know, any sooner than perhaps, you know, a month or so from now when we've got -- each got a little bit more information. When they see our list of the people under 26(a) that we say we're going to rely upon, when we see theirs, when we have a sense from the private Plaintiffs of who they are going to rely upon, it gets a little easier to think about what really is, in fairness, the right way to split

this baby.

THE COURT: Okay.

MR. MARRIOTT: Thank you, Your Honor.

THE COURT: All right. Let's go down the line.

Mr. McClammy?

MR. McCLAMMY: Thank you, Your Honor. For the record, Jim McClammy on behalf of Syngenta.

I would echo what Mr. Marriott said. I think it's just too early at this stage and an insufficient justification for the number of 20, which I believe far exceeds what the local rules would contemplate even for an exceptional case.

And we've been flexible. We have suggested that for now it would make sense to have that number be set at 10 for each of Corteva and Syngenta; but in the hope of reaching a compromise, we would be willing to say not to have that set yet. But if the Court is desirous of setting something now, we think that we should start at the 10 number. And that's without prejudice to their right to come back to the Court, after having the benefit of our 26 (a)(1) disclosures, after us having the benefit of seeing their disclosures, so that we can have a more informed discussion about who these particular individuals might be.

But I agree with Mr. Marriott, the idea that -- as this case proceeds, that those numbers wouldn't more appropriately be narrowed. I think starting out more narrowly

now would benefit, you know, the efficiencies of this case going forward rather than starting at the number of 20 and then saying that we might even hear from them that we want to go even farther than that.

THE COURT: Mr. Carson?

MR. CARSON: Yes, Your Honor. Wesley Carson for the Plaintiffs.

Plaintiffs believe that their request is, in fact, already narrow. We did not choose a number like these other cases that we cite in our 26(f) report, some cases allowing 80 party depositions, 70 nonparty depositions, unlimited depositions, 170 depositions. We actually sat down, and we thought about how many depositions do we need to prove the claims in this case.

And this is a complicated case, involving two defendants, six or more active-ingredient product markets. In general, antitrust cases involve additional proof that are not present in other cases that may be contemplated by the local rules here.

So I think, given those facts and also in the facts that we cite in our 26(f) report -- they also had precomplaint investigations. So, you know, the fact that the courts ordered these hundreds and hundreds of depositions, we're not asking for that here. What we're asking for is 20 depositions per Defendant and 30 third-party depositions, which would put us at

70, which is less than any of the other cases that we cited involving recent large antitrust government actions.

THE COURT: All right. So anything else that anybody needs to be heard on?

MR. MARRIOTT: No, thank you, Your Honor.

THE COURT: All right. So what I would intend to do is I want to go ahead and adopt a schedule and parameters for the FTC case while we're here today. So because there's this dispute, what I'm going to do is -- you know, I said I will split the difference. But, actually, looking at the number and what you've indicated here, it seems like there is more than 10, but I don't count to 20 yet, other than maybe folks that may be identified based on discovery.

In light of that, I think it is a reasonable conclusion to go with the number in between where you all think you most definitely need to be. And so that would be 15. So what I am going to do is for now set it at 30 third-party depositions that you all agreed to, plus experts, plus the 15 each for Corteva and Syngenta.

I will just signal that I am open to that being 20. I mean, I think that it's reasonable in a case of this size with the number of distributors you have and the number of -- or the time period that you're looking at that that's entirely possible. But if we're going to keep inching up, I want to know who it is that needs to be deposed and why they couldn't

be covered in the number that you've got.

And so -- and then as to the deposition of the Plaintiffs, it sounds like you all have reached an agreement. At this point I'm not going to set a number for depositions of the Plaintiffs, but I'm also open to that if -- it's not a number issue. I think the issue is is there anything that is properly subject to a deposition.

And so on that, if you all can reach an agreement, then that's certainly within the scope of discovery. You don't need to come back and ask for permission to add a deposition of the Plaintiff. I'm just not going to set a specific number or a limit, but I think the issue there is whether those are appropriate or not. I am going to trust you all to try and work that out.

I'm not going to do depositions of counsel. I think you all can anticipate that we're not going to go down that road. But if there is some basis whether it would be appropriate to have a deposition or you can't cover it with written discovery, then I'll let you all try to reach an agreement on that; and if you can't, then you all can bring it before me. Whether you do it as a motion to quash or a motion for leave, however you want to present it to the Court, you can do that, and I'll deal with that as a particular issue. Again, that's not to be a scope of discovery or the extent of the number that I might include. It's more a particular issue,

depending on what the particular deposition is.

So that's what I would intend to do. What I think might be helpful is for me just to run through then what that looks like as an overall schedule, and then I'm going to take up the separate question of whether and how we coordinate and what we do with the MDL folks.

Before I do that, is there anything you all need to be heard on before I start this with the FTC folks?

MS. MACLEAN: No, Your Honor, nothing from MDL Plaintiffs on those specific issues.

THE COURT: All right. So let's run through this then.

I tried to make a chart based on what I understood your positions to be. So I'm going to run through this list; and then if I have something that is not what you all agreed to or I have missed something, please let me know.

So the track is going to be exceptional. The date to close discovery will be April 22, 2025, for fact discovery and October 2, 2025, for all discovery. The discovery will commence on entry of the scheduling order. We'll go ahead and say discovery can commence today in the FTC case. Again, all of these are just for the FTC case, and we'll take up the MDL case separately. So it would be commencing discovery today.

The initial disclosures are due April 19, 2024. The interrogatories and requests for admission, Defendant Syngenta

and Defendant Corteva may each serve up to 30 interrogatories and 30 requests for admission to the Plaintiffs collectively, and the Plaintiffs may serve up to 30 interrogatories and 30 requests for admission on Syngenta and 30 on Defendant Corteva.

As to document retention, you all have requested retention and confirmation, that there is no auto delete and employees with personal devices used for business are retaining any information.

With respect to depositions, as to third parties, Plaintiffs may take 30 depositions of third parties. That does not include former employees of the Defendants. The Defendants may also take 30 depositions of third parties. You may depose witnesses from the prior investigative hearings. We will let you all continue to meet and confer regarding protocol for time limitations for those. And the deposition of experts do not count in that limit of 30.

In addition to that 30, the Plaintiffs may take 15 depositions of each Defendant, Syngenta -- 15 of Syngenta and 15 of Corteva, and that includes current and former employees.

With respect to depositions of the Plaintiffs, I'm not going to set any particular number on that, but I will leave it to the parties to bring that before me if there are any issues or disputes if they can't agree. If there's a deposition notice, then that needs to be resolved further.

The proposed protective order and ESI order would be

submitted to the Court by April 30, 2024. After we enter that order, the Plaintiffs would need to produce their investigative file within 14 days thereafter. And then 45 days after production, the parties will send their requests for production. They may supplement that later if there's good cause, but that would be the substantial exchange at that point.

And then 30 days after service of those requests for production would be the deadline for proposing custodians and search terms. And then within 30 days after the proposals, there would be an agreement or a motion to compel as to the custodians and search terms.

That gets us roughly into the fall. So my thought would be to set this for a status conference in October, which would essentially leave it to you all between now and October to go through that process of exchanging the investigative file, doing your requests for production, agreeing on search terms, and then come back here before we start the next round of things.

And so my pretrial conference day in October is October 24. So you all can go ahead and at least tentatively set that for a hearing on October 24, and we'll just call it a status conference or hearing to see where we are and make sure there are not any issues with discovery at that point.

And then the document production will begin on a

rolling basis, substantially complete by January 22, 2025.

The deadline for producing a privilege log would then be February 21, 2025.

The deadline to notice fact depositions would be for February 21, 2025.

Again, it may be appropriate then to have another status conference in February. I'll wait and set that. But just so you all have it on your radar screen, we'll anticipate coming back as we need to check in on these things.

The close of fact discovery would be April 22, 2025.

Expert reports from both sides are June 6, 2025, with rebuttals August 5 and replies September 4. The close of expert discovery is October 2.

And then one other date I had was to request leave to amend the pleadings or add parties. I don't anticipate that we're going to go through another round of that, but to the extent that we needed to, the deadline for requesting leave would be July 19, 2024.

I understood that you all didn't believe mediation would be helpful now. What I would like to do is go ahead and include that by October 2, 2025. I think it would be helpful to at least have you meet with the mediator to see where you are when you get later in the process. So at some point between now and October 2, 2025, whenever you all think it may be most helpful and at least by that fall of 2025, that you go

ahead and meet with a mediator.

You all can agree on a mediator; or if you don't agree within, say, three weeks, the clerk will just select a mediator from the court's panel. My guess is that you all would probably be able to find someone that you can agree who would have some degree of expertise in this area that might be helpful. If not, then we'll just choose somebody on the court's regular panel of mediators here.

And I know that this is not automatically selected for mediation, but I think it might be helpful to include it here. And so we'll just do that at some point during the discovery period.

And then dispositive motions and *Daubert* motions would be November 18; responses, January 23, 2026; and replies, February 2, 2026 -- February 20, 2026.

That is an extraordinarily long discovery period. I understand why you're asking for that much time, given the volume of discovery. That's part of the reason why I'm exceeding even the exceptional number of depositions and why we have the volume that we do. But I can't imagine a scenario where then we come back and say, Let's keep extending this further. So given how long the discovery period is that we're setting here, I'm anticipating that you all will stay with that.

And just to forecast a bit here, while I think we may

be able to coordinate some discovery, I'm not intending to necessarily include the same time limits. And so if there is some additional discovery that needs to happen in the MDL case, then the FTC case can still stay on the track that it's on, or at least that would be my intent going into this.

So you all in this case have your scope, your schedule. This is what you should be working with. And then we'll talk about -- to the extent it's helpful and efficient to coordinate, then maybe we can do that. And, certainly, I think that's in Defendants' interest -- it's in everyone's interest to do that, to the extent possible. But I'm not anticipating that we will need to extend these deadlines in the FTC case, just to go ahead and give everyone that initial thought.

So before I then turn over to the MDL case, anything that I missed? Anything I need to correct? Or anything else you wanted to be heard further?

Ms. Maltas?

MS. MALTAS: No, Your Honor.

THE COURT: All right. Mr. Marriott?

MR. MARRIOTT: Your Honor, I think we just were asking one another whether it's clear what the interrogatory limit is as it relates to the States. I think what we need is the States and the FTC together.

THE COURT: Together, yes. My understanding would be -- let me make sure I articulate that right, but my

understanding was that the Plaintiffs collectively, and that would include the FTC and the States together, could serve 30 interrogatories and 30 requests for admission on Syngenta and 30 interrogatories and 30 requests for admission on Corteva.

MR. MARRIOTT: That's our understanding. Thank you, Your Honor.

THE COURT: And, Ms. Maltas, is that your understanding as well?

MS. MALTAS: Yes, Your Honor, that's our understanding.

THE COURT: All right. I should ask, Mr. Harper, anything you needed to add or correct as to any of those things for the States.

MR. HARPER: No, that's fine. Thank you, Your Honor.

THE COURT: All right. And, Mr. McClammy, for Syngenta?

MR. McCLAMMY: For Syngenta, Jim McClammy.

Could I just ask Your Honor one question?

THE COURT: Of course.

MR. McCLAMMY: Which is I know Your Honor mentioned including something with respect to the document preservation.

THE COURT: Right.

MR. McCLAMMY: I just would ask for clarity as to that.

THE COURT: Okay. So I noted in the Plaintiffs'

request that they had asked -- let's see. And this is at page 6, subparagraph 2(b). It says: "The Parties have discussed issues relating to document preservation and retention. Plaintiffs requested information regarding Defendants' systems and/or protocols in place for document retention with respect to the collaborative and ephemeral messaging. Plaintiffs also requested the Defendants confirm they have disabled automatic deletion of documents by messaging programs and that employees with responsive documents have assured that personal devices used for business are retaining communications."

I think it was that second sentence there that I read, that there's no longer any automatic deletion of documents happening and that employees are retaining communications.

Is there any issue with that, Mr. McClammy?

MR. McCLAMMY: No, Your Honor. I think the -- just so that we can make sure that we're compliant with the order or directive of the Court. We, for sure, have policies in place and have directions in place that these are not to be deleted.

THE COURT: Right.

MR. McCLAMMY: And, you know, we don't want to run afoul of the Court's order --

THE COURT: Right.

MR. McCLAMMY: -- if, inadvertently, an employee had done something. And so the ability to say that we've ensured

it -- we've taken every possible measure to make sure we are compliant --

THE COURT: I got you.

MR. McCLAMMY: -- but I just don't want to fall short --

THE COURT: So the only sort of issue you're raising is with the word "ensured" on employees; it's not -- no issue with the disabling automatic deletion?

MR. McCLAMMY: Exactly, Your Honor.

THE COURT: Deletion. It's just with employees. And to the extent you can't control everything they might do with their personal device, you've done everything that you can to communicate the policies and that they shouldn't be deleting any communications?

MR. McCLAMMY: That's absolutely right, Your Honor.

THE COURT: Mr. Marriott?

MR. MARRIOTT: Yeah. I appreciate counsel raising this issue. I think that we had -- certainly, counsel for the Government asked these questions, and I believe what was said by all of the Defendants is that we believe that the clients and the companies were taking steps to preserve documents that they recently believed were potentially responsive.

What -- I guess I'm mindful a little bit of this idea that that doesn't necessarily mean that every single employee in the company is under a hold order. What one does in these

circumstances is figure out who are the people from whom it appears they want documents, and efforts are made to suspend the automatic deletion as to those individuals, not necessarily in a company that is going to have tens of thousands of people. So I think flagging that that -- that we aren't necessarily now going to be under an order that says within the company, broadly speaking, thou shall not.

THE COURT: Right.

MR. MARRIOTT: And so we took this as a good-faith effort on the part of the Government to just remind us of the obligation. We believe our clients have fulfilled that obligation. We would suggest that any kind of actual order on this is better reserved to the ESI order, which the parties are separately negotiating, and that it's there that we imagine this would be turned into -- that this expression of concern would be turned into an order.

THE COURT: All right. I think that's fair. I don't need to include that in the scheduling order. I think that it is certainly expected or anticipated that any automatic deletion has been turned off for documents that aren't potentially relevant or related and that employees reasonably believed to have responsive documents have been directed not to delete any communications, but I'll leave the specifics of the language for that for the ESI order.

Ms. Maltas, any concern on that?

MS. MALTAS: No, no concern on that.

I mean, we did -- in addition to what Your Honor pointed out, we did specifically include collaborative and ephemeral messaging. That's just become a very hot topic in cases like this recently. We've seen a lot of defendants who don't preserve that type of information. So we do just want to make sure that we are, and I believe Syngenta and Corteva are on notice that that is something that needs to be retained and that that's a critical piece of discovery.

THE COURT: All right. To the extent it's potentially responsive or relevant to the issues in this case?

MS. MALTAS: Yes, Your Honor.

THE COURT: Okay. All right. So I'm not going to include anything specifically in the scheduling order on that, but, Mr. McClammy and Mr. Marriott, you all both sort of understand generally what the Government is requesting and what your obligations would be on that?

Mr. McClammy?

MR. McCLAMMY: Absolutely, Your Honor.

THE COURT: Mr. Marriott?

MR. MARRIOTT: I believe so, Your Honor.

THE COURT: All right. Very good.

Mr. McClammy, anything else?

MR. McCLAMMY: I think the last thing is just another point of clarification just on the number of interrogatories

and requests for admission --

THE COURT: Right.

MR. McCLAMMY: -- that those numbers are for each of Syngenta and Corteva?

THE COURT: Right. And I think that's what I intended, and I think it's always good to clarify. So my intent on that is Syngenta and -- Syngenta may serve 30 interrogatories and 30 requests for admission to the Plaintiffs collectively. So that includes the States as well. So you've got 30. And then Corteva has 30 interrogatories and 30 requests for admission to the Plaintiffs collectively.

Is that your understanding?

MR. McCLAMMY: Yes, we're all on the same page there then. Thank you, Your Honor.

THE COURT: Absolutely.

And, Ms. Maltas, is that your understanding as well?

MS. MALTAS: Yes, that's our understanding as well.

THE COURT: Okay. All right. So I think we've clarified -- we set out all of the deadlines, and we've resolved the issues on that.

So before I turn to the issue of the MDL case and the possible coordination issues, anything else, Ms. Maltas, we need to address for the FTC scheduling order?

MS. MALTAS: No, Your Honor.

THE COURT: Okay. And, Mr. Marriott, anything for

the FTC scheduling order?

MR. MARRIOTT: No, Your Honor.

THE COURT: Mr. McClammy?

MR. McCLAMMY: No, Your Honor.

THE COURT: Okay. All right. So now I want to open up this separate issue with the MDL case and so we can talk about coordination.

Essentially, this is where we are:

The Defendants requested a stay of discovery, which is understandable because the motions to dismiss were pending. The district judge entered an order staying discovery, which means I'm not going to just implicitly or informally start discovery without some clear direction that you all are in agreement and that the district judge has authorized that. So that's where we are.

And if we do start discovery, then we need to decide are we going to set a scheduling order and actually -- or an initial pretrial conference so we can do a full scheduling order, or are we just going to have some discovery to the extent that it overlaps.

So what I may do is -- let me start with the MDL Plaintiffs. So you can just tell me where you are with the discovery, and then I will hear from the Defendants on that.

MS. MACLEAN: Thank you. Margaret MacLean for the private Plaintiffs. I appreciate the opportunity to be heard

here today.

THE COURT: Sure, absolutely.

MS. MACLEAN: So we are in agreement with the Defendants that discovery should start. We would be happy to get going with the 26(f) conference procedure, but we are very much at an informational disadvantage here. We haven't seen even the unredacted complaint in this action, let alone the materials that Defendants produced to the FTC and let alone the investigative file.

So from our perspective, receiving those materials would be the number one thing that would help us get a sense of what would be an appropriate schedule for this case where efficiencies could be realized as far as discovery. So that's our number one priority. To the extent that the Court's inclined to allow us to commence discovery, which we would very much encourage and hope for, that's where we would like to start, Your Honor.

THE COURT: Okay. So, essentially, you're requesting to go ahead and begin discovery. You would request first to get a copy of the investigative file, and then you would request to go ahead and set it for an initial pretrial conference after you have the investigative file so that you can prepare a discovery plan?

MS. MACLEAN: That's correct, Your Honor.

THE COURT: All right. That's helpful. Thank you.

All right. So I'm going to go to the Defendants now.

Mr. Marriott, I can start with you again in terms of where we are now for Defendants with discovery in the MDL.

MR. MARRIOTT: Sure, Your Honor.

So, as we've said, we're eager to see these cases coordinated. We've now had a conference and an initial hearing here with the Court in the FTC and the States/Government action. We would like to see that happen at the earliest opportunity with the private Plaintiffs. We see no reason to delay that when we ordinarily wouldn't have the production of any documents in anticipation of having that conference. So we can have that conference right away.

We don't actually control the FTC's investigative file in any case. That's something we don't even have. So that's something that has a whole process associated with it. So we don't think having an initial conference should be delayed in view of that.

We made an effort --

THE COURT: Well, I will -- I'm going to put sort of a little bit of an extra thought on that --

MR. MARRIOTT: Sure.

THE COURT: -- because my recollection, at least, was that they've requested that, and you all opposed that.

MR. MARRIOTT: We opposed the production of our own production to the FTC.

THE COURT: Okay.

MR. MARRIOTT: We didn't oppose because we don't -- I mean, I don't recall opposing, but we wouldn't have had -- we don't have it anyway. So we weren't in a position to produce the Government's investigative file. So we don't have that.

We certainly opposed the commencement of discovery before the pleadings were set and the motion to dismiss had taken place. We acknowledge that. We did that. I believe that's the practice --

THE COURT: Right.

MR. MARRIOTT: -- and the district judge ordered that.

THE COURT: Right.

MR. MARRIOTT: So that we opposed.

We're simply saying now there's no reason that in the private case we shouldn't get going, just as we've gotten going in this case. We had this conference today without there being any separate discovery in this litigation by the FTC of us, and they haven't gotten the production relating specifically to this case here. We had the conference, as you would do anyway. You have the conference. As of the conference, discovery would start. They'll serve their discovery requests. They'll serve their interrogatories. We'll respond to them in due course.

What we're saying had to happen, Your Honor, is -- we began the process already, right. We failed, but we tried to

bring the parties together to see if we could get one schedule for everybody. So while we failed -- and we totally understand why we failed, Your Honor -- the process has begun. We've shared our schedule. We've shared our thoughts. Plaintiffs have shared their thoughts, right. We haven't officially done, as, I suppose, technically what the rules require there.

So what we would suggest is we simply now complete that process. We can do it very promptly. If the Court will give us a date as to when we can come back and do this for the private case, everything will cascade off of that date, and we can be here and we can get underway.

Controlling the investigative file is not something that we control. We don't have that. And as soon as we get it, I understand what has to happen is a protective order has to be entered. Then notice has to be given to the people -- the third parties who made information available to the Government. When that notice period has run, the Government can then give the file to us. Then there is an issue of whether we give it to the private Plaintiffs, whether the FTC gives it to the private Plaintiffs.

But I would hold up --

THE COURT: So -- because our order we just adopted said I will get the protective order and the ESI order by April 30, and then 14 days after entry is the deadline for them to produce the investigative file to you.

Is that right, or you think there's other notice and periods of delay on that?

Ms. Maltas, I will let you --

MS. MALTAS: That notice is baked into the 14 days, Your Honor.

THE COURT: Okay.

MS. MALTAS: And, also, if it would just be helpful to clarify when --

THE COURT: Sure.

MS. MALTAS: -- we talk about the investigative file, a vast majority of the investigative file is Syngenta and Corteva's documents --

THE COURT: Right.

MS. MALTAS: -- we will not be producing back to them. They are free to produce them to the private Plaintiffs if they would like to. They are their documents.

The issue on the notice is the third parties. So we will give the proper notice to the third parties once the protective order is entered, produce those documents to Syngenta and Corteva. We're not really allowed to produce them directly to the private Plaintiffs because we're not in the same case. But then at that point, Syngenta and Corteva can also let the third parties know, Hey, we're going to give those documents to the private Plaintiffs, too, and they will get those.

But those really are just the third-party documents. And Syngenta and Corteva -- my understanding is, I believe, they are free to do whatever they would like with their documents.

THE COURT: Okay. So when you talk about the investigative file, essentially what you contemplate is the third-party documents and then maybe a list of the documents that were provided to you by Syngenta and Corteva, since they already have those documents, just confirming, and it includes all of the documents that they provided to you?

MS. MALTAS: Yes, Your Honor. I believe we'll have in the protective order some provisions that say, essentially, that anything produced by Syngenta and Corteva in the -- in the investigation will then be part of this case. They don't have to reproduce anything to us either if it were to be responsive to our new RFPs. I'm trying to be efficient.

THE COURT: All right. So, Mr. Marriott, I'll let you jump back in with where you were then.

MR. MARRIOTT: So, Your Honor, again, we're happy to get it going. Obviously, we want to coordinate this. So if we don't get this going, we can't really coordinate.

THE COURT: Right.

MR. MARRIOTT: So I think the incentive is pretty straightforward.

THE COURT: Right.

MR. MARRIOTT: So we're now on a path. Your Honor will enter the order that you laid out today.

THE COURT: Right.

MR. MARRIOTT: We would like to meet and confer with the private Plaintiffs to see if we can't get an agreement as to what the dates are. Whether they are the exact same dates or not, only the meet-and-confer will tell.

THE COURT: Right.

MR. MARRIOTT: But they will be whatever they will be. If we reach an agreement, great. If not, we would like to get in front of this Court as soon as we can to have Your Honor decide what the schedule is. And a protective order can be entered in that case, as it's being entered in this case. And with the protective order entered, we can begin to share documents.

THE COURT: So it sounds like at least the bulk of the investigative file or a large or important part of it would be you all's documents that were the source of the -- or the subject of the prior request that was opposed.

Are you agreeing now that you would produce those documents to --

MR. MARRIOTT: Yeah. I mean, I don't know what proportion it is because I haven't seen it. I would imagine it's a big chunk of it. We are prepared to produce our documents upon the entry of a protective order.

THE COURT: Okay. All right. So once the protective order is entered, then you would be able to do that not only to Plaintiffs, but then to the MDL Plaintiffs as well?

MR. MARRIOTT: Correct.

My point simply, Your Honor, is what we don't want to see happen is, you know, the protective order gets entered. We produce the documents. And then we wait six months while we have a discussion about what a schedule should look like. In our minds, that's essentially a guarantee there won't be coordination.

THE COURT: Right.

MR. MARRIOTT: So I'm happy to coordinate and do it early if it means that we're actually proceeding to get coordination. But if we're not proceeding to coordination, what's the point in our sharing it early?

THE COURT: Right. No, I understand, although, you know, I think for the Court's purposes -- and, again, I understand why you didn't want to start discovery while there were motions to dismiss pending. But it is a pivot on all fronts in terms of going ahead and now shifting gears on that.

What I can tell you is that the next possible day that we would do this was in -- it would be in May for my pretrial motion day in May. I'm looking to see if I have that. So I think May 23rd. And the case manager is going to look and let me know for sure.

And so it's not going to happen before then, but I guess the question is -- and I will come back to the MDL Plaintiffs as well -- whether you can get them enough information for them to be able to have a reasonable meet-and-confer and be able to come back here for the next May 23rd pretrial motion date?

Although, again, I think that before I actually have that pretrial conference, you all need to file a joint motion to lift the stay of discovery. And then it will be up to the district judge. He may refer it to me. But if he wants to consider whether to change his order on that or whether to ask you all to address further why it's before him that way, I think that's a procedural step you all need to do first, because --

MR. MARRIOTT: Understood.

THE COURT: -- as a technical and substantive matter, I think discovery has been stayed by the district judge's order. So you all need to file a joint request, explain why you changed your position on that, ask it to be set for a pretrial conference. And then, again, if the district judge refers it to me, I can do that; but if he wants to take it up himself, then he can consider it that way as well.

MR. MARRIOTT: Thank you, Your Honor. I understand.

THE COURT: Yes, sir, Mr. McClammy?

MR. McCLAMMY: Thank you, Your Honor.

Just to pick up, I guess, where Your Honor left off, we are certainly amenable and, indeed, want to move forward as quickly as we possibly can here.

I think with respect to the documents issue, I would like to --

(Indiscernible cross-talk.)

THE COURT: Right.

MR. McCLAMMY: -- earlier request, there's two pieces of this. And I don't believe it was our opposing the precomplaint discovery that has led to kind of the departure from these cases being on a much more similar track. It was understood at the time, I think, that the motions to dismiss would actually be heard at the same time. I believe it was the Plaintiffs' request that they actually await a decision on the FTC's motions to dismiss that has resulted in the motions to dismiss being heard on a different schedule.

Given where we are now, though, and with the fact that the -- there's such an overlap here in the underlying facts and the witnesses and the documents, it really, I think, is impossible for these cases to be anything other than coordinated.

In light of that, we would like to start -- we understand the Plaintiffs in the MDL action would like to start the discovery to allow for that possibility. I think it is a little bit asking for something that they would not normally

have the benefit of to say that they can't make a decision now on what their schedule might look like.

As Your Honor has noted, this is already a fairly lengthy schedule. The case is certainly complex. But the idea that parties that are used to being in complex cases wouldn't be able to work out a schedule before they had the opportunity to review every document, I don't think that's what we normally do. We're typically in the situation where we're thinking about the number of depositions, how long it would take for discovery. And they don't have to live with what would usually be the case, coming up with a deadline for the end-of-fact discovery when they haven't received the document yet, haven't even started to think about search terms and custodians. What they are going to get here is the benefit of the FTC's investigation. So they're going to have a bunch of documents that they will be able to start the kickoff. We should be able to move even quicker in a case like this than what might be the normal case where we're starting from scratch.

THE COURT: So if the Court were to lift the stay of discovery and let it proceed, and if I was then able to set this for a pretrial conference on May 23rd, and if the protective order is entered May 1, once the proposal is submitted -- or at least, you know, very early in May -- then is there any reason why you couldn't go ahead and produce your investigative file or the information that you have that you

previously produced to the Government to the MDL Plaintiffs before May 23rd to go ahead and move that process forward faster so that we don't have to set it out for another later day?

MR. McCLAMMY: No, Your Honor. If there is a protective order entered and then governing the MDL matter, we would be prepared to make the production of the Syngenta documents upon the entry of that order as long as the discovery has been lifted. I would hope we would be able to do that consensually with the Plaintiffs with the understanding that we're working towards a schedule.

THE COURT: Right.

MR. McCLAMMY: And if, for example, FTC is able to give us the identities of the third parties that we would need to contact and notice, we will even work to provide notice to those third parties in advance of us even receiving these materials so that we can have the notice period start to run as quickly as possible. And as soon as we receive things, we can also turn them over to the class Plaintiffs.

THE COURT: All right. I think that's helpful. I think the more you all do quickly on that, if the discovery stay is lifted, the more likely that we could set this case for May 23rd and actually proceed on a schedule at that point.

But let me come back to Ms. MacLean, and let you tell me for the MDL Plaintiffs where you are in response to

everything that's been added here.

MS. MACLEAN: Sure. Thank you. Margaret MacLean again.

So, yes, I take Mr. McClammy's point that we wouldn't ordinarily have access to all of those materials to set a schedule, but, here, the Defendants are wanting to coordinate. And so in order for us to be able to coordinate, we need to know what we are, in fact, coordinating, what has been done, and what's left to be done.

And as I understand it, it's a fairly voluminous amount of documents we're dealing with here. It's not two pages and I flip through it and I understand. So I think there will be a certain amount of digestion period.

That said, we're looking to go forward as soon as possible. To the extent that the Defendants are able to make their production immediately or even sooner than contemplated, that would go a long way. We're not looking to delay here, but we are looking to at least have -- be on an equal informational footing before we start trying to coordinate something we don't know what it is.

THE COURT: Okay. All right. I think that's helpful.

Mr. Marriott, anything else you need to add on that?

MR. MARRIOTT: I think I have said my piece. Thank you.

THE COURT: Mr. McClammy?

MR. McCLAMMY: Nothing further, Your Honor.

THE COURT: All right. For the Government in the FTC case, anything you needed to add as to what they may have discussed on the MDL case?

MS. MALTAS: No, Your Honor.

THE COURT: Okay. So this is my thought for you all.

I think the first thing you need to do is file a joint motion to lift the stay of discovery and request that the case be set for an initial pretrial conference. You need to include in there why you are now agreeing to that or what has changed and why that would be helpful and worthwhile to do, even while the motions to dismiss are pending.

That may go to the district judge, who will then consider it, because it was his order to stay discovery. If he refers it to me, then I can go ahead and move on that, based on the information you presented; but it needs to go to him first so he can make the decision about whether to address that or whether to refer it to me.

If discovery is then allowed to proceed, if the stay is lifted, then I would intend to set it for the next available pretrial conference day just so you all will have it on your calendar. That's May 23.

I am going to ask my folks to confirm that.

THE CLERK: Yes, ma'am.

THE COURT: Okay. So on May 23.

And then if that -- if that order has been entered for the stay of discovery to be lifted, then in anticipation of the pretrial conference, once a protective order is entered in the FTC case, and that includes, to the extent appropriate, the MDL Plaintiffs, then you all can go ahead and make that initial disclosure of those documents that were previously produced in the investigation or in the prior Government proceeding so that there's additional information that the MDL Plaintiffs have in order to be able to discuss coordination.

So that, I think, would be essentially the option for you all going forward, to get the stay lifted. And then, if it's lifted, to go ahead and proceed with disclosing the information that was already provided that's part of the investigative file, or at least that Syngenta and Corteva provided to the Government as part of that proceeding, so that the MDL Plaintiffs have it, to the extent possible prior to the pretrial conference, so that that can be at least maybe moving the discussion forward and we don't have to continue it out another month while they're reviewing that and taking that into account.

In terms of coordination, even if the stay of discovery is lifted, these are still separate cases. I think the district judge has made that clear. I'm not going to try to consolidate them in any way, but we can coordinate. And so

I'm very interested in coordination, to the extent that can be efficient, but not to the extent that it would delay the FTC case or, for that matter, the MDL case.

And so I would intend to adopt separate discovery limits for the MDL case. And then what the coordination should or could include would be where depositions, for example, are cross-noticed, then they can count for both sides. If they are not cross-noticed, then there may need to be good cause before that individual is deposed again, along the lines that we avoid some duplicative discovery by precluding a second deposition of the same person, unless there was a good cause or good reason for not having cross-noticed and participated in the deposition the first time.

So if the same discovery limits were applied in the MDL case, you may end up with them all cross-noticed and having exactly the same number that way; but if either side wants to pass on one of the depositions to take someone else, then that's an option that they would reserve as well.

Those are the kinds of things you all can discuss, but that's the general sense of how we can still have discovery proceeding in each case on its own schedule and its own scope but with coordination so that we don't unnecessarily duplicate, certainly, depositions but also written discovery, to the extent that you all want to try to address that.

That maybe helps -- hopefully helps a little bit in

terms of advancing the discussions that you may have.

Let me ask -- I'll start with you, Ms. MacLean. Anything else that would be helpful in terms of where we proceed in this case today?

MS. MACLEAN: No, Your Honor, I think that that was clear and that was helpful.

THE COURT: All right. Very good.

Mr. Marriott?

MR. MARRIOTT: All good, Your Honor. Thank you.

THE COURT: Okay. And, Mr. McClammy?

MR. McCLAMMY: Nothing further. Very helpful, Your Honor.

THE COURT: Okay. All right. Very good.

And then, Ms. Maltas, I will come back to you, too. Anything else you would need to add for the FTC?

MS. MALTAS: Nothing else, Your Honor.

THE COURT: All right. So what I am going to do is -- actually, what I may do is ask you all to submit to me now a proposed scheduling order that includes all of those things we just discussed. I think it looks like your joint proposal, except with just a few minor modifications that I've made. But it would be helpful to me for you all to submit that to make sure that I've covered everything and that we've included -- and I want you all -- I don't want just an order from one side. I want you all to talk to each other so that

it's clear that -- I obviously understand you didn't reach an agreement that 15 was the limit, that that was imposed by the Court. But, otherwise, that it's agreed in terms of what all the provisions are.

MR. MARRIOTT: This is David Marriott.

I'm confident we can submit an agreed-upon order, Your Honor.

THE COURT: That will be helpful to me. And then as soon as you submit that, I can turn around and get that filed so it's part of the record.

Ms. Maltas?

MS. MALTAS: We can also do that.

I did just want to confirm, though, for the record that we have in our scheduling order that discovery will open upon the issuance of the scheduling order, but that has been amended. Discovery opens now; correct?

THE COURT: That's correct. We'll go ahead and open discovery now so that nothing about getting that entered delays the start of discovery or the dates that we've otherwise set. But it would still be helpful if you all can go ahead and do that sooner rather than later so we can get that entered. So if you can do that here in the next day or two, get it submitted as a proposed order, and then I can get it entered for you.

MS. MALTAS: Wonderful. Thank you, Your Honor.

THE COURT: Very good.

And so with respect to the FTC case, the minute entry will just note that we had the initial pretrial conference and that any disputes were resolved, and the Court will enter a scheduling order, and the parties will submit their joint proposed order after the hearing.

With respect to the MDL case, we'll include a minute entry, since we've had the proceeding here, that if the parties are in agreement, they'll file a joint motion to lift the stay of discovery for consideration by the Court and that if the case is ready to proceed with discovery and the stay is lifted, then it can be potentially set for a pretrial conference on May 23rd.

All right. I think that takes care of everything. As I said, my practice is to go around the room until no one has anything left to say. So I'm going to do it one last time.

Ms. Maltas, anything else for the FTC?

MS. MALTAS: No, thank you, Your Honor.

THE COURT: I'm actually going to ask Mr. Harper, too.

Mr. Harper, anything else for the States?

MR. HARPER: No, Your Honor.

THE COURT: And then, Mr. Marriott?

MR. MARRIOTT: Nothing further Your Honor. Thank you.

THE COURT: Mr. McClammy?

MR. McCLAMMY: No, Your Honor.

THE COURT: All right. And, Ms. MacLean?

MS. MACLEAN: No, Your Honor.

THE COURT: Very good. Thank you all.

I will note for the FTC folks, you're certainly invited to come for the initial pretrial conference in the MDL case. So in the same way, if there is anything that needs to be addressed or heard, I'll just put you on notice that you're included in that as well.

MS. MALTAS: Thank you, Your Honor. I'm sure we'll send a representative.

THE COURT: Very good.

We'll go ahead and adjourn court.

(END OF PROCEEDINGS.)

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UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF NORTH CAROLINA

CERTIFICATE OF TRANSCRIBER

I, Briana L. Chesnut, Official United States Court Reporter, certify that the foregoing transcript is a true and correct transcript of the proceedings produced solely from an audio recording to the best of my ability in the above-entitled matter.

Dated this 22nd day of May 2024.

Briana L. Chesnut, RPR
Official United States Court Reporter